

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S) : Keresman III, et al.
FOR : **SECURE AND EFFICIENT PAYMENT
PROCESSING SYSTEM**
SERIAL NO. : 09/488,297
FILED : 01/20/2000
EXAMINER : O. Akintola
ART UNIT : 3691
CONFIRMATION NO. : 4241
ATTORNEY DOCKET NO. : **PRAZ 200001US01**

PETITION UNDER 37 CFR 1.181 TO CORRECT PATENT TERM EXTENSION

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Issue Notification mailed on June 2, 2010 for the above-referenced patent application indicated that the Patent Term Extension was going to be only 682 days. The corresponding patent subsequently issued as 7,742,967 on June 22, 2010. This Petition has been filed within two months of the date of issue of the patent. Applicants note that were advised to not file this Petition until after the patent issued so as to not delay the issuance of the patent.

Applicants believe that the Patent Term Extension of 682 days was incorrectly calculated under former 35 U.S.C. 154(b) for the reasons set forth below.

The present application was filed January 20, 2000, and is thus subject to former 35 U.S.C. 154(b). According to paragraph (b)(3) of that section, the period of delay under paragraph (a)(3) is the sum of the number of days, if any, in the period beginning on the date on which an appeal to the Board of Patent Appeals and Interferences

(BPAI) was filed under 35 U.S.C. 134 and ending on the date of a final decision in favor of the applicant by the BPAI.

In this case, the patent term should have been calculated from July 14, 2005 (i.e., the date upon which the original Notice of Appeal was filed) to January 21, 2010 (the date that the BPAI Decision on Appeal in favor of the applicants was mailed).

Instead, the patent term was incorrectly calculated from March 11, 2008 (when the second Notice of Appeal was filed) to January 21, 2010 (the date that the BPAI Decision on Appeal in favor of the applicants was mailed).

As stated above, Applicants filed their Notice of Appeal on July 14, 2005. In view of the appeal brief filed on January 3, 2006, the Examiner reopened prosecution in an Office Action mailed December 14, 2006. To avoid abandonment of the application, Applicants were given two choices:

To avoid abandonment of the application, appellant must exercise one of the following options:

(1) File a reply under 37 CFR 1.111 (if this office action is non-final) or a reply under 37 CFR 1.113 (if this office action is final); or,

(2) Initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fees and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in the 37 CFR 41.20 have been increased since they were previously paid, then the appellant must pay the difference between the increased fees and the amount previously paid.

In other words, Applicants were not given the option of simply taking this case to the Board based on the original appeal brief.

Applicants submitted a response to the Office Action -- with no claim amendments. A Final Office Action was mailed September 7, 2007. The second Notice of Appeal was filed on March 11, 2008.

Significantly, no further amendments to the claims were submitted after the original Notice of Appeal was filed on July 14, 2005. Rather, all of the activity subsequent to the original Notice of Appeal, including the filing of the second Notice of

Appeal, was necessitated by the Examiner. Ultimately, the BPAI agreed that there were allowable claims in the application and issued its favorable decision on January 21, 2010.

In conclusion, applicants believe that the Patent Term Extension for this application should have been calculated from **July 14, 2005** to **January 21, 2010**. Accordingly, an appropriate Certificate of Correction pursuant to 37 CFR 1.322 is requested.

Insofar as the USPTO made an error in calculating the Patent Term Extension under former 35 U.S.C. 154(b), it is believed that no fee is required for this Petition.


Respectfully submitted,

Fay Sharpe LLP

7/9/10
Date



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Date: <u>7-9-10</u>	Name: Elaine M. Checovich